

address marketing of **video** programming services.^{110/} The 1992 Cable Act is silent with respect to nonvideo services, and it would be wrong to interpret that silence as an intent to interfere with or otherwise affect cable operator practices concerning nonvideo services or institutionalizes network services.^{111/}

L. The Commission Need Not Adopt Specific Negative Option Billing Regulations.

The Cable Act prohibits cable operators from charging for services that subscribers do not affirmatively request.^{112/} Thus, a "non-response" following a proposed addition of a new service or equipment does not constitute approval by the subscriber. Cox agrees with the Commission's tentative proposal that either oral or written acceptance of proposed service changes will constitute valid acceptance of a new service or equipment.^{113/} A requirement that subscribers

^{110/} "A cable operator may not require the subscription to any tier other than the basic service tier . . . as a condition of access to **video programming**" (emphasis added). 47 U.S.C. § 543(b)(8)(A).

^{111/} Though the House Report states that Section 623(b)(8) of the 1992 Cable Act (Section 623(b)(3) of the House bill) prohibits subscription to other tiers as a prerequisite to "programming offered on a per-channel or per-program basis," House Report at 85, even the House bill specified "video" programming.

^{112/} 47 U.S.C. § 543.

^{113/} Senate debate on the issue of negative option billing indicates that the purpose of the provision is to insure that subscribers don't pay for services "without consciously knowing they are purchasing that service and making a decision to do so." 138 Cong. Rec. S567-8 (daily ed., Jan. 29, 1992) (remarks by Sen. Gorton). Affirmative acceptance of any kind, whether oral or written, should therefore be permissible.

have to confirm in writing that they accept a new service or equipment would be burdensome to both subscribers and cable operators.

Cox also agrees that a "change in the composition of a tier that was accompanied by a price increase **justified under [Commission] rate regulations** would not be subject to the negative option billing prohibition."^{114/} Likewise, system-wide equipment upgrades accompanied by an increase would not trigger the negative option provision.

There is no need for the Commission to adopt specific regulation which address this issue. Franchising authorities and subscribers may file a complaint with the Commission should they believe that a cable operator is in violation of this section. State and municipal laws that conflict with the provision should be preempted to the extent that they are inconsistent with Commission policies and regulations.^{115/}

The Commission need not adopt additional protections against re-tiering abuses by cable operators. The regulations that govern basic and non-basic tier services will provide adequate protection against tier changes that violate the negative option billing provision. It is therefore not necessary to further regulate tier changes.

^{114/} Notice at ¶ 120 (emphasis added).

^{115/} For example, a state or municipal law requires consumers, including cable subscribers, to provide written, rather than oral acceptance of new service, would be preempted.

There is similarly no need for the Commission to adopt a provision requiring cable operators to notify subscribers of service changes. Cable operators routinely provide subscribers with notices of service changes, and such requirements are often contained in franchises or addressed by customer service standards.


VIII. CONCLUSION

The rules and policies proposed herein will help preserve the flexibility that cable operators need to respond to the demands of their markets

and to increasing competition in the 1990s. For these reasons, Cox respectfully submits that the Commission should adopt policies and rules in accordance with the recommendations herein.

Respectfully submitted,

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